

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35935

RUBEN VILLARREAL,)	2009 Unpublished Opinion No. 600
)	
Petitioner-Appellant,)	Filed: September 3, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Owyhee County. Hon. Gregory M. Culet, District Judge.

Summary dismissal of application for post-conviction relief, affirmed.

Metcalf Law Office, PLLC, Russell G. Metcalf, Homedale, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Ruben Villarreal appeals the district court's summary dismissal of his application for post-conviction relief. We affirm.

I.

FACTS AND PROCEDURAL BACKGROUND

Villarreal was charged with attempted murder and aggravated battery. Pursuant to a plea agreement, the State dismissed the charge of attempted murder and Villarreal pled guilty to aggravated battery in violation of Idaho Code §§ 18-903, 18-907, 18-908, and 18-112A. The trial court imposed a unified sentence of ten years, with two years determinate.

Villarreal filed an application for post-conviction relief asserting: (1) his guilty plea was unknowing and involuntary; and (2) ineffective assistance of counsel relative to the filing of a Rule 35 motion. The district court granted relief on the ineffective assistance of counsel grounds, which is not at issue here. The State filed a motion to summarily dismiss the claim that

his guilty plea was unknowing and involuntary, which the district court granted. This appeal followed.

II. ANALYSIS

Villarreal claims the district court erred in summarily dismissing his post-conviction claim of an invalid guilty plea. He argues that his guilty plea was invalid because he did not understand the consequences of pleading guilty. Specifically, Villarreal asserts that he was under the impression that he would receive a unified sentence of five years, with two years determinate.

An application for post-conviction relief initiates a proceeding that is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990). An application for post-conviction relief differs from a complaint in an ordinary civil action. An application must contain much more than “a short and plain statement of the claim” that would suffice for a complaint under Idaho Rule of Civil Procedure 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, either pursuant to motion of a party or upon the court’s own initiative. Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. Summary dismissal is permissible only when the applicant’s evidence has raised no genuine issue of material fact that, if resolved in the applicant’s favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.

App. 1988); *Ramirez v. State*, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987). Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the State does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986). Further, allegations contained in the application are insufficient for granting relief when they are clearly disproved by the record of the original proceeding. *Charboneau v. State*, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007) (affirming summary dismissal of a post-conviction application).

In *State v. Yakovac*, 145 Idaho 437, 180 P.3d 476, (2008) the Court held:

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, we will determine whether a genuine issue of fact exists based on the pleadings, depositions, and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct. App. 1993). “[W]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences.” *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982). “When an action is to be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts.” *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

Id. at 444, 180 P.3d at 483.

A guilty plea is valid only if the record demonstrates the plea was entered into in a voluntary, knowing, and intelligent manner. Three questions must be answered affirmatively for the guilty plea to be valid: (1) was defendant's plea voluntary in the sense that he understood the nature of the charges and was not coerced; (2) did the defendant knowingly and intelligently waive his rights to a jury trial; and, (3) did the defendant understand the consequences of pleading guilty. *Workman v. State*, 144 Idaho 518, 527, 164 P.3d 798, 807 (2007).

The plea agreement provided that in return for Villarreal pleading guilty to aggravated battery, the prosecutor would dismiss the charge of attempted murder and would not oppose Villarreal's request for a particular sentence. To ensure the plea was knowingly entered, the trial court engaged in a plea colloquy with Villarreal:

THE COURT: Other than this agreement by the State to dismiss the count and not make a recommendation regarding the sentence, other than it run concurrently and allow you and your attorney to put on a sentencing argument and victim's input, other than that, have there been any promises, threats, inducements to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: No one's suggested just because you plead guilty, I will be lenient on you?

THE DEFENDANT: No.

THE COURT: I don't know what the final sentence will be. I understand, though, that the Ada County case arose out of this one, there was a sequence of events. So the recommendations that have been presented based upon the limited information I've received about the case don't seem out of line based on the facts as I heard them. But I'm not bound by this recommendation, do you understand? I'm just bound by the maximum penalty of 15 years in prison and \$15,000 fine. I will give weight to and consider this discussion. I mean, I'm going to look at it. But you understand I'm not bound. I still want to see the presentence investigation and other – listen to the victims. Do you understand that?

THE DEFENDANT: Yeah, yeah.

Villarreal pled guilty and requested a unified sentence of five years with two years determinate. However, the trial court imposed a unified sentence of ten years, with two years determinate.

Villarreal claims to have believed his counsel had an agreement with the prosecutor and the trial court for him to receive a unified sentence of five years, with two years determinate. He asserts that he “was under the impression and had the frame of mind that if he plead guilty, the [trial court] was going to sentence him to five years, two years fixed, and three years indeterminate.” He argues that since he was under the impression he would receive a particular sentence, he did not understand the consequences of pleading guilty. Although Villarreal claims that the trial court should have questioned him further regarding a conference which the trial court held with counsel and whether counsel made promises regarding sentencing, he also claims that he considered the trial court's questions to be mere formalities of little import.

As noted above, Villarreal denied knowledge of any promises other than the terms of the agreement outlined by the trial court, which agreement did not include a specific sentence. The record establishes that the trial court told Villarreal three times that it was not bound by any recommended or requested sentence and that the court had not yet determined what the final sentence would be. The district court, in summarily dismissing his claim, took into consideration Villarreal's asserted belief in a binding agreement as to sentencing but found that his claim was contradicted by the record. Allegations contained in the application are insufficient for granting

relief when they are clearly disproved by the record of the original proceeding. *Charboneau*, 144 Idaho at 903, 174 P.3d at 873. The district court correctly concluded from the record that there existed no genuine issues of material fact precluding summary dismissal.

III.

CONCLUSION

The district court did not err in granting the State's motion for summary dismissal of Villarreal's claim that his guilty plea was entered unknowingly. The district court's summary dismissal of Villarreal's application for post-conviction relief is affirmed.

Chief Judge LANSING and Judge PERRY, **CONCUR.**